



FH
[REDACTED]

STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

DECISION

MQB/170152

PRELIMINARY RECITALS

Pursuant to a petition filed November 13, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Polk County Department of Social Services in regard to Medical Assistance, a hearing was held on December 16, 2015, at Balsam Lake, Wisconsin.

The issue for determination is whether the petitioner's Medicare premium assistance can be retroactively reinstated.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

[REDACTED]
[REDACTED]
c/o [REDACTED]
[REDACTED]
[REDACTED]

Petitioner's Representative:

[REDACTED]
[REDACTED]
[REDACTED]

Respondent:

Department of Health Services
1 West Wilson Street, Room 651
Madison, Wisconsin 53703

By: [REDACTED]
Polk County Department of Social Services
100 Polk County Plaza, Suite 50
Balsam Lake, WI 54810

ADMINISTRATIVE LAW JUDGE:

Michael D. O'Brien
Division of Hearings and Appeals

FINDINGS OF FACT

1. The petitioner (CARES # [REDACTED]) is a resident of Polk County.
2. The petitioner received Qualified Medicare Beneficiary from June 1, 2009 through March 31, 2014.

3. The petitioner's representative requested QMB on November 2, 2015.
4. The county agency approved the petitioner's request for QMB with benefits beginning on December 1, 2015.

DISCUSSION

The Qualified Medicare Beneficiary (QMB) program pays the Medicare Part B premiums and some deductibles and copayments of eligible persons whose income does not exceed the federal poverty level. *Medicaid Eligibility Handbook*, § 32.1.1. The petitioner received benefits from June 1, 2009, through March 31, 2014. She contends that she never received notice that the benefits would end. Because of the alleged lack of notice, when she reapplied for QMB on November 2, 2015, she requested that her benefits be reinstated retroactive to April 1, 2015. The county agency determined that the benefits should begin on December 1, 2015, because "QMB benefits begin on the first of the month after the month in which the individual is determined to be eligible." *Medicaid Eligibility Handbook*, § 32.7.1.1.

The petitioner's file does contain a notice dated March 3, 2014, concerning her QMB benefits. Under the section, "Who is not enrolled?" it listed the petitioner's name, giving a date of April 1, 2014. The reason given for ending her enrollment was, "You did not ask for this benefit." The notice indicated that if she did not agree with the decision, she had to appeal within 45 days. *Exhibit 1.I* presume the notice was mailed and she received it.

The statement that the petitioner did not request this benefit is confusing because it implies that she did not wish to receive QMB. It likely reflects the lack of precision used for standard language involving situations where a person's benefits might end because of a change in the manner in which she is eligible for medical assistance. Regardless, the notice did comply with the administrative code provision regulating notices when a medical assistance benefit will end. (Medicare Premium Assistance is considered a medical assistance benefit.) Under Wis. Admin. Code, § DHS 103.09(4), agencies must notify recipients in writing at least 10 days before ending medical assistance. The notice "shall clearly state what action the agency intends to take and the specific regulation supporting that action, and shall explain the right to appeal the proposed action and the circumstances under which MA is continued if a fair hearing is requested." The notice was sent 29 days before the benefits ended, indicated that as of April 1, 2014, the petitioner would not be enrolled in QMB, listed the statutory citation for its action, and correctly explained that she must appeal within 45 days as required by Wis. Admin. Code, § HA 3.05(3). And even if the petitioner was confused by the notice or did not receive it, she should have discovered in less than 19 months that her premium assistance had ended because it affected the net amount of SSI she was receiving. Thus, whether by the March 3, 2014, notice or subsequent constructive notice through the change in her SSI benefits, her appeal is too late to challenge the ending of her QMB on April 1, 2014.

Because she cannot challenge the agency's decision to end her QMB benefits in 2014, she must reapply to regain eligibility. As the agency correctly pointed out, those benefits cannot begin until the month after she is found eligible. Because she did not reapply until November 2015, the agency could not have started her eligibility before December 2015, as it did. Therefore, I must uphold its decision.

CONCLUSIONS OF LAW

1. The petitioner cannot appeal the agency's decision to end her QMB benefits on April 1, 2014 because she did not challenge that decision within 45 days.
2. The county agency correctly determined that the petitioner was first eligible for QMB as of December 1, 2015, the month after she applied.

THEREFORE, it is

ORDERED

The petitioner's appeal is dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 26th day of January, 2016

\sMichael D. O'Brien
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on January 26, 2016.

Polk County Department of Social Services
Division of Health Care Access and Accountability
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